

APPEAL NO. 020764
FILED APRIL 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 19, 2002. The hearing officer resolved the disputed issues by concluding that the appellant/cross-respondent (claimant) did sustain a compensable injury on _____; that the claimant did not have disability as a result of the injury sustained on _____, beginning December 4, 2001, and continuing through the date of the CCH; and that the injury sustained on _____, does not include the lumbar spine MRI findings dated October 8, 2001. The claimant appeals the determinations regarding disability and extent of injury. The respondent/cross-appellant (carrier) argues in its response that there is sufficient evidence to support the hearing officer's determinations regarding disability and extent of injury. In its cross-appeal, the carrier appeals the determination of the hearing officer that the claimant sustained a compensable injury on _____. The carrier contends that the challenged determination has insufficient evidentiary support. The appeals file does not contain a further response from the claimant.

DECISION

Affirmed.

The claimant had the burden to prove, by a preponderance of the evidence, that he sustained a compensable injury on _____; that he had disability as that term is defined in Section 401.011(16); and that the compensable injury included the lumbar spine MRI findings dated October 8, 2001. These issues presented the hearing officer with questions of fact to resolve.

The claimant testified that he had extra work to finish on _____, and that when he left work on that day he felt pain. A medical record dated October 4, 2001, indicated a diagnosis of thoracic and lumbar soft tissue injury. Later medical records indicated the claimant additionally had a more serious lumbar condition. However, the hearing officer was not persuaded that the evidence explained how the more serious condition resulted from the claimant's work activities, but rather that the lumbar condition appeared to be degenerative in nature.

There was conflicting evidence presented at the CCH on the disputed issues. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer's determinations on the issues are not so against the great weight and

preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge